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MEMO

Date: July 1, 2014

Re: Second Reading - Ordinance Amendment (procedures related to alleged violations of conditional use/variance conditions)

Dear Mayor and City Council,

The Planning Commission/Board of Adjustment held its regular meeting on June 9, 2014. At that meeting they gave a recommendation to amend certain ordinances relating to the procedures to be followed for alleged violations of conditional use permits or variances and for the recording of such decisions with the County Recorder.

The first reading of the ordinance occurred at the June 16, 2014 meeting of the City Council. This will be the second reading.

PROPOSED ORDINANCE AMENDMENT

Application: Ordinance amendment to add to existing language to section 11.04 of the City Code and add a new section 11.04.H entitled "Revocation, Suspension or Refusal to Renew Procedures". The proposed amendment will clarify the procedures by which a previously granted variance, conditional use or other permit may be revoked, suspended or not be renewed and clarify that both variance and conditional use permit decisions are to be recorded at the Morrison County Recorder's office.

Applicant: City of Little Falls

Background Information:

- Proposal:** Section 11.04.D of the current City Code states that a "violation of any condition set forth in a conditional use permit shall be a violation of this chapter and *automatically* terminate the conditional use permit" (emphasis added). Upon review of this particular requirement, the City Attorney and City Staff were concerned that such an *automatic* revocation of a conditional use permit would fail to provide due process to the permit holder. In other words, the automatic revocation of a conditional use permit would not provide the permit holder an opportunity to respond to their alleged violation nor an opportunity for any members of the public to provide their input into the decision nor the

Planning Commission or City Council an opportunity to review the situation. Presumably, it could be only up to the Zoning Administrator as to whether a violation had occurred.

The proposed language would address this by providing a clear process to address a potential revocation of a conditional use permit *or* a variance. This process would involve scheduling a public hearing if the Zoning Administrator obtained information indicating a basis for revocation, suspension or amendment of the conditional use permit.

The proposed changes also clarify that variances *and* conditional use permits are to be recorded at the County Recorder's office (the current language only specifies variances).

A copy of the proposed language amendments to Section 11.04, as recommended by the Planning Commission, are attached.

Planning Commission/Board of Adjustment Action: The Planning Commission has recommended approval of the proposed ordinance amendments as presented.

City Council Direction: The City Council may approve the ordinance amendment, deny the amendment, or table the issue if the Council should need additional information. If the application is tabled, the Council should provide specific direction as to what additional information is needed.

If you have any questions, please feel free to contact me. I can be reached by phone at (888) 439-9793 or by email at oleson@hometownplanning.com.

Sincerely,



Ben Oleson, AICP
Hometown Planning
City of Little Falls Zoning Official

PROPOSED AMENDMENTS TO SECTION 11 – LITTLE FALLS ZONING
ORDINANCE
JUNE 9, 2014 PUBLIC HEARING

C. Variances:

1. The timelines for variance requests shall be governed by Minnesota Statute 15.99, as amended.

2. The processing of variances shall be governed by Minnesota Statute 462.357, as amended.

3. ~~No~~ ~~A variance permitting the~~ The erection or alteration of a building taking place pursuant to a granted variance shall be valid for a period longer than six [completed within 6] months of the date the variance was granted, unless a building permit is has been issued and the construction actually begun within ~~that~~ the six month period, and is thereafter diligently pursued ~~to completion~~. Failure to comply will leave the variance subject to revocation as set forth herein.

4. ~~A variance shall lapse and become void if the variance for which a permit has been granted is discontinued for a period of one year, or if a variance is no longer required by the provisions of this chapter.~~

4. Revocation: A variance may be revoked, suspended, or amended by following the requirements and procedures in Section 11.04.H ~~of the City Code~~ herein.

D. Conditional Uses:

1. Purpose: In order to give the district use regulations of this chapter the flexibility necessary to achieve the objectives of the comprehensive guide plan, in certain districts conditional uses are permitted, subject to the granting of a use permit. Conditional uses include those uses generally not suitable in a particular zoning district, but which may, under some circumstances, be suitable. When such circumstances exist, a conditional use permit may be granted. Conditions may be applied to issuance of the permit and a periodic review of the permit may be required. ~~The permit shall be issued for a particular use and not for a particular person or firm. The cancellation of a permit shall be considered equivalent to a rezoning, and the same requirements and procedures shall apply.~~

2. Application, Referral To Planning Commission, Planning Commission Recommendation And Council Action: Except as otherwise noted in this subsection, the application and presentation requirements for conditional permits shall be the same as those for variances as provided in subsection C of this section.

3. Revocation: A conditional use permit may be revoked, suspended, or amended by following the requirements and procedures in Section 11.04.H ~~of the City Code~~ herein.

4. Use Of Permit: ~~Upon the issuance of a conditional use permit by the council, said permit shall be in force on a temporary basis for a period not to exceed one year from the date of issuance. If, during said one year period, the conditional use authorized by said conditional use permit has not been completed, said~~ or the use granted has been discontinued for a continuous one year period after grant of the permit, then the conditional use permit shall lapse and become void unless, during said one year period, the city council extends the period of time ~~be subject to complete said authorized use.~~ revocation, suspension, or amendment as set forth in Section 11.04 H herein.

5. Lapse Of Conditional Use Permit: ~~A conditional use permit shall lapse and become void if the conditional use for which the conditional use permit has been granted is discontinued for a period of one year, or if the use for which a conditional use permit was granted is changed for a period of one year to a use for which no conditional use permit is required.~~

6. Cancellation: ~~A conditional use permit may be cancelled by following the requirements and procedures for an amendment to the zoning ordinance. (Ord. 18, 3rd Series, eff. 9-29-1986)~~

G. Conditional Use Permits and Variances Recorded: A certified copy of every conditional use permit and variance granted shall be ~~filed~~ recorded with the county recorder. (Ord. 132, 2nd Series, eff. 10-29-1984)

H: Revocation, Suspension or Refusal to Renew Procedures ~~Amendment~~ of Previously Approved Variances and Conditional Use Permits

1. Jurisdiction: Upon obtaining information that ~~will indicate~~ indicates a basis for revocation, suspension or ~~refusal to renew~~ amendment, the Zoning Administrator or ~~their~~ his/her designee ~~shall~~ may initiate proceedings for revocation, suspension, or ~~refusal to renew.~~ amendment if a warning or other corrective action is deemed to be inappropriate or ineffective. If so, the matter shall be heard by the authority that originally granted the applicable variance or permit. A decision on whether to revoke, suspend or ~~refuse to renew~~ amend a permit that was originally issued by the Zoning Administrator shall be made by the Zoning Administrator. All other revocations, suspensions or amendments shall be submitted for hearing as indicated herein.

2. Hearing: The issuing authority shall establish a time, date and location for a hearing for revocation, suspension, or ~~refusal to renew~~ amendment, at the request of the Zoning Administrator or the Administrator' designee. The Administrator or designee shall ~~mail~~ serve notice of the date of the hearing to the ~~affected part(ies)~~ permit or variance holder no less than ten (10) days prior to the date of the hearing. using the same process as is required for civil actions at law . Other interested parties may be notified by first class mail or other appropriate means. At the hearing, the issuing entity will take such evidence as it deems appropriate. In all cases, the ~~affected party~~ holder shall be entitled to

present such evidence as ~~they deem~~ that party deems appropriate either personally, or through an attorney. Should the ~~affected partyholder~~ fail to appear ~~either~~ in person, or through counsel, the issuing entity shall still have the authority to take evidence and make a decision upon the request for revocation, suspension or ~~refusal to~~ renew/amendment.

3. Findings at hearing: Should the issuing authority find, by a preponderance of the evidence, that the ~~affected partyholder~~ has failed to comply with the conditions set forth on the variance or permit, the issuing party shall make that finding and state the reasons for its determination.

4. Remedies: Upon finding that the ~~affected partyholder~~ has failed to comply with the conditions set forth in the variance, conditional use permit or other permit, the issuing entity ~~will~~ may then ~~ascertain the~~ determine appropriate ~~sanctions~~ sanctions, if any, to impose. ~~Sanctions may include, but not be limited to, revocation, suspension for a stated period of time, or the refusal to renew. Suspensions may also be conditional upon the conduct of the affected party, or amendment to the previously imposed conditions.~~ A variance, conditional use permit or other permit may be suspended until such time as the ~~affected partyholder~~ comes into compliance with the terms of their original approval. The criteria for determining the appropriate ~~sanctions~~ sanctions shall include, but are not limited to, the length of time of the violation, the severity of the violation, and risk to the health, welfare, and safety of the neighboring residents and/or community as a whole.